

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 93-0105 CS

Controlled Substance Excise Tax

For Tax Period: 07/25/92

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ISSUE

I. Controlled Substance Excise Tax -- Imposition

Authority: IC 6-7-3-5; IC 6-7-3-6; Bryant v. State of Indiana, 660 N.E.2d 290 (Ind. 1995)

Taxpayer protests the imposition of the controlled substance excise tax.

STATEMENT OF FACTS

Taxpayer was arrested for possession of marijuana on July 25, 1992. The Department assessed the controlled substance excise tax, based on a weight of 279.00 grams, on January 5, 1993. Taxpayer protested the assessment. Additional relevant facts will be presented below, as necessary.

I. Controlled Substance Excise Tax -- Imposition

DISCUSSION

Indiana Code Section 6-7-3-5 states:

The controlled substance excise tax is imposed on controlled substances that are:

- (1) delivered,
- (2) possessed, or

(3) manufactured;
in Indiana in violation of IC 35-48-4 or 21 U.S.C. 841 through 21 U.S.C. 852.
Pursuant to Indiana Code Section 6-7-3-6:

"The amount of the controlled substance excise tax is determined by:

(1) the weight of the controlled substance. . ."

Upon taxpayer's arrest, the Department assessed the controlled substance excise tax based on a weight of 279.00 grams.

Double Jeopardy

At the administrative hearing, taxpayer argued the controlled substance excise tax violated the principles of double jeopardy.

Indiana's Supreme Court addressed this issue in Bryant v. State of Indiana, 660 N.E.2d 290 (Ind. 1995), and found a controlled substance excise tax assessment was a punishment for purposes of double jeopardy analysis. The Court went on to state that the jeopardy attaches when the Department serves the taxpayer with its Record of Jeopardy Findings and Jeopardy Assessment Notice and Demand. In determining which jeopardy is barred as the second jeopardy the relevant dates must be considered. Id. at 298, 299. Taxpayer was presented with the Record of Jeopardy Findings and Jeopardy Assessment Notice and Demand on January 5, 1993. According to records provided by the taxpayer, a guilty plea was not accepted and judgment entered in the criminal prosecution until July 27, 1993. The Department finds, in accordance with the law as stated in Bryant, that the tax assessment and jeopardy came first in time and were not barred by the principles of double jeopardy.

Timeliness

Taxpayer also argued the administrative hearing was not timely and claimed a violation of due process.

The administrative hearing was held on May 27, 1997. Taxpayer claimed the Department failed in its duty by holding the hearing more than four years after the jeopardy assessment.

Taxpayer cited no authority which defines the Department's duty or what the repercussions should be if the Department fails in that duty. Taxpayer simply argues the tax should be abated.

The Department, however, will not abate the controlled substance excise tax assessment. The Department finds the delay in the administrative hearings to have been reasonable and convenient given there were several issues regarding the controlled substance excise tax making their way through the court system.

Upon a final ruling from the Court, the Department took action to schedule the administrative hearings at the earliest convenient times.

Settle for Restitution Paid

Finally, taxpayer argues the tax assessment should be settled for the amount of restitution already paid by the taxpayer to a Drug Task Force.

The amount of restitution paid to the Drug Task Force has no bearing on the Department's assessment.

The restitution paid was the result of a criminal proceeding in which the Department took no part. The Department will not abate or settle a tax assessment based on amounts paid to other entities.

FINDING

Taxpayer's protest is denied.